

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HARRY AND DAVID,
an Oregon Corporation

1:09-cv-3013-CL

Plaintiff,

v.

ORDER

ANSHU PATHAK, an individual,
dba Organic Fruit of the Month Club,
also dba Brentwood Trading Group, &
also dba Premium Enterprises,

Defendant.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Plaintiff filed objections and I have reviewed the file of this case *de novo*. See 28 U.S.C. § 636(b)(1)(c); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). I find no

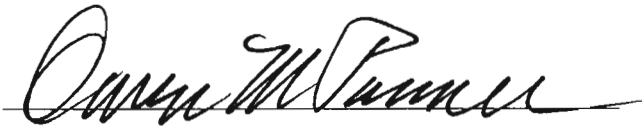
error in the Report and Recommendation.

While I recognize Judge Ronald Lew concluded Pathak was a vexatious litigant in another trademark case one year ago, the circumstances in this matter differ and support the conclusion that, for now at least, a pre-filing order against Pathak is unwarranted. Based on past conduct, I remain concerned that Pathak may attempt to harass plaintiff through litigation. That said, I have previously found Pathak in contempt - as recently as October 2011 - and reserve the right to do so in the future, should the need arise. In short, if only through the threat of a bench warrant for his arrest, it appears Pathak may have finally learned to respect this Court and the rights of plaintiff.

Magistrate Judge Clarke's Report and Recommendation (#149) is adopted. Plaintiff's request that Anshu Pathak be declared a vexatious litigant and that a pre-filing order be entered against him is DENIED at this time. Plaintiff is granted leave to re-file the motion should Pathak attempt, in the future, to re-litigate the trademarks or claims at issue here.

IT IS SO ORDERED.

DATED this 14 day of April, 2012

A handwritten signature in black ink, appearing to read "Owen M. Panner", written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE